

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**WSOU INVESTMENTS, LLC d/b/a,
BRAZOS LICENSING AND
DEVELOPMENT**

Plaintiff,
V.

GOOGLE LLC,

Defendant.

Civil Case No. 6:20-cv-585-ADA

JURY TRIAL DEMANDED

**JOINT MOTION FOR ISSUANCE OF LETTER OF REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE AND APPOINTMENT OF COMMISSIONERS TO TAKE
EVIDENCE PURSUANT TO CHAPTER II, ARTICLE 17 OF THE HAGUE
CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN
CIVIL OR COMMERCIAL MATTERS**

The parties in the above-referenced actions seek the Court's assistance in order to take deposition testimony from witness Richard Ekwall in Switzerland. Richard Ekwall is a witness who will offer testimony relevant to this action. The parties have agreed to conduct the deposition of Richard Ekwall in Switzerland, but the parties must first meet certain foreign discovery conditions pursuant to the Hague Convention.

Switzerland, as a party to the Hague Convention, requires litigants to obtain permission from the Federal Office of Justice before taking deposition testimony of a witness located in Switzerland. To obtain such permission, the parties must have a United States District Court (1) appoint a Swiss commissioner and appoint representatives for the parties who will participate in the deposition as commissioners, and (2) request judicial assistance from the applicable Swiss authorities.

To that end, the parties request that the Court grant this Joint Motion for Issuance of Letter of Request for International Judicial Assistance and Appointment Of Commissioners to Take

Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. The parties have agreed that Olivier Buff will be appointed Swiss Commissioner. The parties have also agreed that Greg Lanier, Sasha Mayergoyz; Tracy Stitt, Michael Lavine, Rita Yoon, Edwin Garcia, Matt Warren, Jen Kash, and Erika Warren, will be appointed commissioners for Google; and Joseph M. Abraham, Timothy Dewberry, Cliff Win, Jr., Alden Lee, Gregory P. Love, Mark D. Siegmund, and Melissa S. Ruiz will be appointed commissioner for WSOU Investments, LLC d/b/a Brazos License and Development.

Accordingly, WSOU Investments, LLC d/b/a Brazos License and Development (“Brazos”) and Google LLC (“Google”) move the Court, pursuant to Fed. R. Civ. P. 28(b), for entry of an order (the “Order”):

- 1) Appointing Greg Lanier, Sasha Mayergoyz; Tracy Stitt, Michael Lavine, Rita Yoon, Edwin Garcia, Matt Warren, Jen Kash, and Erika Warren on behalf of Google and Joseph M. Abraham, Timothy Dewberry, Cliff Win, Jr., Alden Lee, Gregory P. Love, Mark D. Siegmund, and Melissa S. Ruiz on behalf of Brazos, as commissioners (together, the “Commissioners”), pending the approval of the Swiss authorities, to conduct the examination of witness Richard Ekwall in Switzerland pursuant to Chapter II, Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555 (“Chapter II of the Hague Convention”);
- 2) Appointing Olivier Buff as commissioner (the “Swiss Commissioner”), pending the approval of the Swiss authorities, to supervise the examination of witness Richard Ekwall in Switzerland pursuant to Chapter II of the Hague Convention;

- 3) Issuing a Letter of Request for International Judicial Assistance (“Letter of Request”) pursuant to 28 U.S.C. § 1781 and Chapter II of the Hague Convention;
- 4) Directing submission of the Letter of Request for Assistance to the Swiss Federal Office of Justice (“FOJ”) via the Cantonal Court of Zurich for the purpose of approving the appointment of the Commissioner; and
- 5) Granting such other and further relief as this Court may deem just and proper.

The parties have agreed to use the procedures of Chapter II of the Hague Convention to facilitate the deposition of Richard Ekwall in Switzerland, who has consented to being deposed there via remote means. Under Chapter II, a deposition is supervised by a Swiss Commissioner and conducted by commissioners representing the parties and duly appointed by the Court in the U.S. proceeding, all of whom are authorized to proceed by the FOJ at the request of the U.S. tribunal. This procedure will not restrict the scope of discovery otherwise permissible under the Federal Rules of Civil Procedure.

The steps to proceed under Chapter II of the Hague Convention are as follows:

1. The Court must duly appoint one or several commissioner(s) for the purpose of taking evidence abroad. A proposed order for the Court to appoint commissioners is attached hereto as Exhibit A (the “Proposed Order”).
2. The Court must issue a Letter of Request to the FOJ for authorization to take evidence abroad. A proposed Letter of Request is attached hereto as Exhibit B (the “Proposed Letter of Request”).
3. The necessary application for authorization (the “Swiss Application”), with the Proposed Order and the Proposed Letter of Request attached to it, must be filed with the FOJ via the Central Authority in the canton where the evidence is to be taken, *i.e.*, the High Court

of the Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich, Switzerland.¹ Google will undertake this step if the Court grants the instant motion.

4. Upon approval from the FOJ and subject to the terms contained in the Proposed Letter of Request and/or the Swiss Application, the parties will arrange for the deposition. Olivier Buff will be present in person, or if required remotely, at the deposition of Richard Ekwall to supervise proceedings.
5. The deposition will take place at the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland or, if required, from another location in the canton of Zurich, Switzerland. Richard Ekwall has agreed to voluntarily comply by proceeding pursuant to Chapter II of the Hague Convention.
6. Neither the entry of the Proposed Order, the Proposed Letter of Request, the submission of the Swiss Application nor the conduct of the deposition pursuant to Chapter II of the Hague Convention shall constitute or operate as a waiver of the attorney-client privilege, the work product doctrine, or any other privileges, rights, protections, or objections that may apply to that evidence under the laws of Switzerland, or of the United States, nor as a concession that any assertion of any such privilege, right, protection, or objection is necessarily valid.

¹ The application is sent to the competent Central Authority, i.e., the High Court of the Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich, Switzerland. After examining the Request, the Central Authority will forward the application to the FOJ.

Dated: February 06, 2023

By: /s/ Joseph M. Abraham with
permission, by Michael E. Jones
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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to all counsel of record who have appeared in this case per Local Rule CV-5(b) on February 06, 2023.

/s/ Michael E. Jones

Michael E. Jones